

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LARRY T. GOODMAN, Personal Representative  
of the Estate of AKIL JELANI GOODMAN,

Plaintiff-Appellant,

v

1012, INC., d/b/a THE BEACH HOUSE,

Defendant/Cross-Plaintiff-Appellee,

and

CHANTANTUS FRANKLIN,

Defendant/Cross-Defendant.

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DAVID WASHINGTON,

Plaintiff-Appellant,

v

1012, INC., d/b/a THE BEACH HOUSE,

Defendant/Cross-Plaintiff-Appellee,

and

CHANTANTUS FRANKLIN,

Defendant/Cross-Defendant.

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Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

UNPUBLISHED  
May 19, 2011

No. 296348  
Genesee Circuit Court  
LC No. 08-089183-NO

No. 296349  
Genesee Circuit Court  
LC No. 08-088646-NO

PER CURIAM.

In these consolidated dramshop and negligence cases, plaintiff David Washington and plaintiff Larry Goodman, as the personal representative of the estate of Akil Goodman (“Goodman”), each appeal as of right, challenging the trial court’s orders dismissing their negligence claims against defendant 1012, Inc. (“defendant”), the owner of a nightclub in Flint. Defendant Washington also challenges the trial court’s earlier dismissal of his dramshop claim against defendant. We affirm.

## I. FACTS

These cases arise from a shooting incident at the Beach House nightclub in Flint. In May 2006, defendant Chantantus Franklin, who was under the age of 21, became involved in a dispute with another person at the nightclub. After Franklin was escorted outside the club, he obtained a gun and fired it in the parking lot. Two bystanders, plaintiff David Washington and plaintiff Larry Goodman’s decedent, Akil Goodman, were shot. Goodman died from his wounds. Plaintiffs filed separate actions against defendant for negligence and violation of the dramshop act, MCL 436.1801.

Defendant filed two separate motions for summary disposition. The first motion sought dismissal of plaintiffs’ dramshop claims. As relevant to this appeal, the court dismissed plaintiff Washington’s dramshop claim because it determined that plaintiff could not establish that any illegal sale or furnishing of alcohol to Franklin was a proximate cause of the shooting.<sup>1</sup> Defendants later moved for summary disposition of the negligence claims. The trial court granted the motion, concluding that there was no evidence of a risk of harm to an identifiable invitee to give rise to a duty by defendant to protect its invitees from the criminal acts of third parties.

## II. STANDARD OF REVIEW

This Court reviews a trial court’s summary disposition decision de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted both of defendant’s motions under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

## III. PLAINTIFFS’ NEGLIGENCE CLAIMS

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<sup>1</sup> The court dismissed plaintiff Goodman’s dramshop claim as untimely under the statute of limitations. That decision is not at issue on appeal.

Both plaintiffs alleged that defendant was negligent for not contacting the police after becoming aware that Franklin had threatened to obtain a gun shortly before the shooting. Plaintiffs identified at least one witness who heard Franklin threaten to get a gun and “pop somebody” as Franklin was being escorted out of the nightclub by two of defendant’s bouncers.

In *MacDonald v PKT, Inc*, 464 Mich 322, 338; 628 NW2d 33 (2001), our Supreme Court summarized the extent of a merchant’s duty to protect invitees from criminal acts of third parties, stating:

While a merchant is required to take reasonable measures in response to an ongoing situation that is taking place on the premises, there is no obligation to otherwise anticipate the criminal acts of third parties. Consistent with *Williams [v Cunningham Drug Stores, Inc]*, 429 Mich 495; 418 NW2d 381 (1988), a merchant is not obligated to do anything more than reasonably expedite the involvement of the police. We also reaffirm that a merchant is not required to provide security guards or otherwise resort to self-help in order to deter or quell such occurrences. *Williams, supra*.

Here, the evidence showed that Washington and Goodman went to defendant’s nightclub together. Goodman became involved in an altercation with another patron outside the club. Washington later joined Goodman outside. Franklin was also involved in a separate altercation with a different person outside the club. According to testimony given by a witness in a criminal case arising from the shooting, Franklin and Defan Pringle produced guns and began shooting, without notice and for no apparent reason. Washington and Goodman were both shot, and Goodman died from his wounds. After shots were fired, defendant’s employees contacted the police.

We disagree with plaintiffs’ argument that defendant had a duty to contact the police before the shooting. Although plaintiff presented evidence that Franklin, while being escorted outside the club, threatened to “pop” or shoot “somebody,” this generalized threat was not directed at any specific person. Thus, there was no risk of imminent and foreseeable harm to an identifiable invitee to give rise to a duty to act.

Plaintiffs rely on statements from Faith Williamson and Michael Boateng that they heard one of defendant’s bouncers warn other patrons to stay inside the club because someone was going for a gun. Even if those statements are considered, they do not show the necessary risk of harm to an identifiable victim. At most, they show that a bouncer was aware that someone had threatened to get a gun. Although the bouncer warned some patrons, there was no evidence that those patrons were the subject of the threat, nor, as explained previously, that the threat was directed at anyone in particular. Accordingly, even if these statements are considered, they are insufficient to show a risk of imminent and foreseeable harm to an identifiable invitee to give

rise to a duty to act by defendant.<sup>2</sup> For these reasons, the trial court did not err in dismissing plaintiffs' negligence claims.

#### IV. PLAINTIFF WASHINGTON'S DRAMSHOP CLAIM

Plaintiff Washington argues that the trial court erred in dismissing his dramshop claim. The trial court concluded that Washington was unable to establish that any illegal sale or furnishing of alcohol was a proximate cause of the shooting. We agree.

MCL 436.1801(3) "imposes liability on any licensee that, by the unlawful sale or furnishing of alcoholic liquor to a minor or visibly intoxicated person, has 'caused or contributed' to the intoxication that is a proximate cause of damage, injury, or death." *Hashem v Les Stanford Oldsmobile, Inc*, 266 Mich App 61, 74; 697 NW2d 558 (2005). In *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002), this Court explained:

Serving alcohol to an underage person in violation of MCL 436.33 creates a rebuttable presumption of negligence; however, a plaintiff must still demonstrate that the furnishing of alcohol proximately caused the plaintiff's injury. *Longstreth v Gensel*, 423 Mich 675, 693-695; 377 NW2d 804 (1985). Proximate cause "normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001), quoting *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Generally, proximate cause is a factual issue to be decided by the trier of fact. However, if reasonable minds could not differ regarding the proximate cause of the plaintiff's injury, the court should decide the issue as a matter of law. *Dep't of Transp v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998).

The evidence in this case shows that Franklin consumed, at most, two drinks in defendant's club before the shooting. However, there was no evidence suggesting that the furnishing of alcohol proximately caused the shooting. Franklin did not display any signs of intoxication when he was arrested shortly after the shooting. Witnesses attributed Franklin's actions to his violent character, not the effects of alcohol. Washington did not present any evidence linking the shooting to Franklin's consumption of alcohol. We agree with the trial court that plaintiff failed to establish a genuine issue of material fact regarding the element of proximate cause. Accordingly, the trial court did not err in dismissing plaintiff Washington's dramshop claim.

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<sup>2</sup> Therefore, it is unnecessary to consider the admissibility of Williamson's and Boateng's statements.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Donald S. Owens